

1 things about this issue, which is responding  
2 to the outstanding discovery request.

3 Ms. Kane is correct. We did state  
4 in our filing that we were prepared to move  
5 forward on Issue G and would respond to the  
6 discovery request upon the order of Your  
7 Honor. We stated in there that we were  
8 prepared to respond to those requests within  
9 10 days of the order. That is the time for  
10 one form of discovery. I think the other one  
11 has 14 days, but to show good faith, we are  
12 going to give them the four days.

13 So I am assuming your order will  
14 be out today or tomorrow. So it will be 10  
15 days from today that we would be doing that.

16 She also said we did not object to  
17 the scope of the discovery. That is accurate.  
18 I just want to make one thing clear, so that  
19 nobody is sort of caught off guard.

20 While we will be fully responding  
21 to all the questions, it is going to be  
22 subject to a caveat. We are going to suggest

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1       that a lot of these site based licenses are  
2       subsumed within geographic licenses, and we  
3       believe that, therefore, that sort of moots  
4       the issue.

5               We can explain all that later, but  
6       my point is we are not going to withhold  
7       discovery on that basis, but we are going to  
8       be stating up front as a caveat that we are  
9       not, in providing the discovery, conceding  
10      that issue.

11             Then finally, an issue that I  
12      wanted to bring up, because again I don't want  
13      this to come as a surprise after the hearing.  
14      One of the things the Commission requested  
15      with a document request were all documents  
16      relating to this.

17             JUDGE SIPPEL:   The Commission or  
18      the Bureau?

19             MR. KELLER:     The Bureau.    I'm  
20      sorry, the Bureau asked.   That is on of the  
21      things in the discovery request, a request for  
22      production of documents.

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1                   We have documents, at least 12  
2 boxes of documents that are all the documents  
3 relating to the facilities. These include  
4 construction information, site drawings,  
5 leases, all that sort of thing. But as I say,  
6 that alone, just those call sign files alone,  
7 took up 12 boxes which we managed to get here  
8 from Indiana, but it would cost us at least  
9 \$8,000 and probably more -- we got an estimate  
10 -- to scan in one copy -- you know, just to  
11 scan in, have it scanned in for some sort of,  
12 I don't know. It would cost much more than  
13 that to make multiple paper copies.

14                   My interpretation of the discovery  
15 rule is that we are required to make items  
16 available for inspection and copying. So what  
17 we are going to do is we will make those  
18 documents available. We got them to  
19 Washington.

20                   They are here in Washington. We  
21 will make them available for inspection, but  
22 Maritime literally -- I mean absolutely

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1       literally -- does not have the money to make  
2       copies and, even if it did, I am not sure that  
3       we could expend \$10,000 for something like  
4       that without court approval, Bankruptcy Court  
5       approval.

6               So we are going to make them  
7       available. We have managed to get them here  
8       to Washington for that purpose, but we are not  
9       equipped to make copies of them.

10              JUDGE SIPPEL: Are they in your  
11       offices?

12              MR. KELLER: Right now they are in  
13       the office of a copy center in downtown who is  
14       holding them for us to wait to see what we are  
15       deciding to do. We had them delivered to --  
16       it is called --

17              JUDGE SIPPEL: That is okay. You  
18       don't have to tell me exactly. Let me just  
19       ask you this, both counsel. If those  
20       documents were in your custody, in your firm's  
21       custody, you have a conference room of some  
22       kind?

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1 MR. KELLER: Well, not that we can  
2 -- That is why we took them to the copy  
3 center, because it is a huge amount of  
4 documents, and we put them there, figuring  
5 that way, if people want to make copies, they  
6 are right there at the copy center.

7 JUDGE SIPPEL: Oh, I see.

8 MR. KELLER: They are in like a  
9 little room or an office at the copy center.

10 JUDGE SIPPEL: Well, what kind of  
11 a facility do they have that you can examine  
12 documents?

13 MR. KELLER: They have the ability  
14 to be examined there. There is a couple of  
15 desks or something. I mean, I have been in  
16 there.

17 JUDGE SIPPEL: They do?

18 MR. KELLER: Yes. I have been in  
19 there a couple of times to go through them  
20 myself.

21 JUDGE SIPPEL: Is it in  
22 Washington, D.C.?

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1 MR. KELLER: Yes. It is on K  
2 Street, I believe.

3 JUDGE SIPPEL: Well, how about  
4 that? Could you send -- I don't mean to send  
5 an attorney, but is there an attorney or a  
6 staff member from your office who could go  
7 down there and start looking through these  
8 documents?

9 MS. KANE: Well, honestly, if  
10 there is a location where we could work to  
11 review the documents and determine, if any of  
12 them, we needed to be copied, that would be  
13 okay with us, Your Honor. But absent having  
14 that kind of option, then I see now choice but  
15 to have them copied.

16 If there is not a work space for  
17 us to review them and not -- I don't know how  
18 this is set up, but obviously, we don't want  
19 to be sitting in the middle of a copy center  
20 reviewing this information.

21 JUDGE SIPPEL: I got the  
22 impression there were desks. It is over on K

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1 Street. Send somebody out when they have  
2 lunch just to go down and take a look at the  
3 place.

4 MS. KANE: We could do that, Your  
5 Honor.

6 MR. KELLER: And we are also -- I  
7 am willing to work with the Bureau on some  
8 alternate arrangement. I am not committing to  
9 this right now, but it is either possible  
10 under proper safeguards and control procedures  
11 that we might even be willing to let the  
12 Bureau have the documents for a period of time  
13 to review them in their own facilities, and  
14 then copy them if they want to.

15 JUDGE SIPPEL: Are they Bates  
16 stamped or something like that?

17 MR. KELLER: No. Right now they  
18 are organized by call sign. We have got  
19 documents. Each call sign, a divider, and the  
20 documents behind that. So all I am saying is  
21 I am willing to cooperate with the Bureau and  
22 work out something on this, but we just do not

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1 have the money to copy all these documents.

2 MR. HAVENS: Your Honor.

3 JUDGE SIPPEL: Is this Mr. Havens?

4 MR. HAVENS: Yes, sir.

5 JUDGE SIPPEL: You aren't going to  
6 pay for the copying, are you?

7 MR. HAVENS: I might do that.

8 JUDGE SIPPEL: Oh? Okay. Let's  
9 hear you.

10 MR. HAVENS: Okay. I may pay for  
11 the copying, copy up in DC, and in addition,  
12 Maritime submitted to the Bureau an affidavit  
13 about a half-year ago stating that all the  
14 records of the site based licenses when they  
15 were sold to MCLM were placed at a certain  
16 storage facility near Washington, and Mobex  
17 who is the seller of these did not pay the  
18 copy place and, therefore, they are  
19 withholding the records.

20 So I would -- I don't want to take  
21 time here, but I would discuss that with the  
22 Enforcement Bureau and make arrangements to go

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1 to that storage facility and obtain those  
2 records. Those are not the same records as  
3 these 12 boxes that are coming out of Indiana,  
4 and those were the essential records.

5 JUDGE SIPPEL: You are saying  
6 there are additional documents over and above  
7 the 12 boxes?

8 MR. HAVENS: Yes.

9 JUDGE SIPPEL: and they are  
10 relevant to this issue?

11 MR. HAVENS: They are the most  
12 relevant. The issue in G is not only whether  
13 the stations are operating now or are turned  
14 off, but whether they were constructed timely  
15 and with the required interconnection and  
16 other basic requirements by the construction  
17 deadline, which was -- I don't know -- well  
18 over 10 years ago.

19 Those documents are the ones that  
20 MCLM stated in its opposition to my company's  
21 petition to deny the renewal application of  
22 this WRV 374. They have signed a sworn

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1 statement by the person who was in control of  
2 those records, their former in-house counsel,  
3 Mr. Treadmore, that those documents that  
4 contain the information on these stations,  
5 whether they were built or not and whether  
6 they were operated or not in their critical  
7 initial period were placed at a certain  
8 storage facility, and then Mobex -- Instead of  
9 the buyer keeping them, they all went to this  
10 storage facility, and Mobex dissolved and  
11 couldn't pay. So we would like to --

12 JUDGE SIPPEL: Who is paying --  
13 Well, who is paying then for the storage?

14 MR. HAVENS: We don't know the  
15 actual situation at the storage facility, but  
16 my companies would like the opportunity,  
17 whether it is a subpoena or voluntary  
18 arrangement, to contact the storage facility  
19 and, with some authority from Your Honor, to  
20 obtain whatever documents they have.

21 JUDGE SIPPEL: Well, let me see if  
22 Mr. Keller can shed any light on that.

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1                   MR. KELLER: Yes. First of all,  
2 to clarify, 12 boxes -- In addition to the 12  
3 boxes, I may have at least one other box of my  
4 own that has some additional information that  
5 we would produce. Basically, what we are  
6 producing here in Washington is all the  
7 documents we have.

8                   That is not necessarily all the  
9 documents that maybe perhaps existed at one  
10 time. However, what Mr. Havens is referring  
11 to, I believe the firm was called Iron  
12 Mountain or something like that. It was --

13                  MR. HAVENS: No, it was a  
14 different name.

15                  MR. KELLER: Well, whatever,  
16 whatever it is, it is not -- Some of the  
17 documents were with this company, not all.  
18 What I can do, I will clarify that when I  
19 respond to the Bureau, tell them exactly. But  
20 my understanding is -- and again, I will  
21 double check this and clarify it when I  
22 respond to the document request. My

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1 understanding is that those documents no  
2 longer exist, because after a certain period  
3 of time that company destroyed them when --

4 MR. HAVENS: We were going to test  
5 that.

6 MR. KELLER: Right. I understand  
7 that. I understand that, but to the extent  
8 that the documents are -- Assuming, for the  
9 sake of argument, that it was determined that  
10 the documents are still available at Iron  
11 Mountain or whatever the company is, without  
12 having checked with my client in advance, I  
13 could say we would have no problem allowing  
14 inspection of those documents, subject to the  
15 protective order in this case; because I  
16 believe some of those documents go to other  
17 issues like payments and financings and things  
18 like that.

19 MR. HAVENS: The documents that I  
20 am talking about, if I am recalling exactly  
21 what Maritime stated, they are not in  
22 Maritime's control. The declaration stated



1       that, when Mobex bought those site based  
2       stations, all of the ones in Issue G, it  
3       elected not to keep the documents on the  
4       stations it was purchasing and the licenses.  
5       They remained with the seller, Mobex, and  
6       Mobex placed them at this storage facility.

7               So we want to go directly to the  
8       storage facility. We don't want to get, and  
9       we would see no basis to get, MCLM approval or  
10      disapproval of that, based on the MCLM  
11      statement that it didn't take possession of  
12      the documents. But in any case, in this  
13      discovery process we want some time to go to  
14      third parties and examine the depositions,  
15      document requests and see what they have,  
16      particularly where MCLM has stated itself  
17      under oath that it placed the essential  
18      documents at this facility.

19             JUDGE SIPPEL: Well, I think the  
20      first order of business would be to find out -  
21      - somebody to contact the facility and find  
22      out if these documents actually do exist

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1       there. I don't know what the best way to  
2       proceed on that is, but I am sure that  
3       somebody can figure that out.

4               MR. KELLER: I would agree, Your  
5       Honor. There is nothing to stop them from  
6       talking to any third parties about documents  
7       that he wants. We don't need a discovery  
8       order to obtain information from nonparties.

9               MR. HAVENS: We want the discovery  
10      in order to dispose persons --

11              JUDGE SIPPEL: No, I know why you  
12      want it. I am saying that I am not going to  
13      issue an order to produce documents that don't  
14      exist anymore.

15              MS. KANE: Your Honor, maybe it  
16      would be helpful if Mr. Keller would identify  
17      exactly who has these documents or who may  
18      have these documents. It sounds like there  
19      might be some confusion as to which company  
20      has these documents. If Mr. Keller could  
21      undertake the investigation to determine where  
22      these documents may be and who we should

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1 contact, we will be happy to do so.

2 JUDGE SIPPEL: Just find out who  
3 in Maritime would have information on this,  
4 relevant information, and find out as soon as  
5 you can.

6 MS. KANE: Now with regard to Mr.  
7 Keller's option of making the documents  
8 available to the Bureau for us to review here,  
9 if that is still an option, we would obviously  
10 prefer that option than to have to have people  
11 working at an off-site location, which is  
12 still sort of --

13 JUDGE SIPPEL: But Mr. Havens was  
14 talking about making copies and paying for  
15 them.

16 MS. KANE: Well, for himself, Your  
17 Honor. He is entitled to -- He asked for the  
18 same discovery we did. So he is entitled to  
19 his own working set of those documents, much  
20 like the Enforcement Bureau is.

21 JUDGE SIPPEL: I heard -- You  
22 didn't say this, Mr. Havens, but I got the

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1 impression you were talking about making  
2 multiple copies so that the Bureau would be  
3 able to also --

4 MR. HAVENS: Well, I would send  
5 someone there to see the quantity of documents  
6 and try to arrange a cost effective copying  
7 and, depending on the price, given the cost,  
8 I'm sure you all know, of time and legal and  
9 everything else, and opportunity passing -- I  
10 mean, there is a lot -- These site based  
11 stations are blocking my companies nationwide.  
12 We are losing opportunities, profit and  
13 nonprofit.

14 So, yes, it would make sense for  
15 me to probably pay for the copying, but if I  
16 find a warehouse full of documents that are  
17 irrelevant and trying to fish through them and  
18 find a needle in the haystack, then that may  
19 not be worth copying. We would have to take  
20 a look.

21 JUDGE SIPPEL: I am talking about  
22 the 12 documents. I am trying to help the

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1 Bureau facilitate things for the parties that  
2 really are interested in these documents. You  
3 are, obviously. Correct?

4 MR. HAVENS: One thing, Your  
5 Honor, you know, I am not an attorney. I have  
6 been through litigation. I have seen parties  
7 produce documents or their staff might have  
8 made a mistake or whatever -- whatever it is,  
9 I have seen parties produce documents that are  
10 not responsive, and you really have to work to  
11 find things.

12 So I don't want to come in here  
13 and offend anyone if I say I will pay for the  
14 copies for the Enforcement Bureau and then go  
15 down there or send somebody down there and  
16 find out these don't appear that relevant, and  
17 I might be wasting the money. But I am ready  
18 to send somebody down there, review them, if  
19 it is permitted. I assume these are not  
20 confidential or highly confidential. They are  
21 all records of Commission licenses and  
22 purported legal operations.

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1                   So anyway, I will send somebody  
2                   down there as soon as I am told where they  
3                   are, and take a look, and then I will get with  
4                   the Bureau and see if we can cover the cost.

5                   MR. KELLER:    Let me just also  
6                   state an option here. Obviously, Mr. Havens  
7                   will have to decide what he wants to do.

8                   The quite that I have cited of six  
9                   to eight thousand dollars was what they  
10                  thought it was going to cost to scan all those  
11                  documents in for us, so that we would then  
12                  have an electronic copy. In the process of  
13                  doing that, they would be able to  
14                  electronically add some kind of Bates serial  
15                  numbering to the documents as well.

16                  It would then be possible to  
17                  electronically distribute the documents to  
18                  everybody, but again we don't have the six to  
19                  eight thousand dollars to do that. That is  
20                  number one.

21                  Number two, as to those 12 boxes,  
22                  there is nothing in there that we are going to

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1 be seeking confidentiality on. As I  
2 mentioned, I maybe have another box or so of  
3 documents in my office. Some of those  
4 documents, we may be seeking confidentiality  
5 on, but to that extent, I can copy those,  
6 those limited number of documents.

7 Finally, as to what shape the  
8 documents are in or whether they are relevant,  
9 the Bureau's discovery -- excuse me, the joint  
10 discovery request of Mr. Havens and the  
11 Bureau was very broad. They basically wanted  
12 all documents relevant to the construction,  
13 operation, blah-blah-blah.

14 So, basically, I have made no  
15 effort to weed out things, and the only  
16 organization we have done is to divide them by  
17 -- We figured the best organization we could  
18 do is to line them up by call sign.

19 MS. KANE: So you organized the  
20 documents yourself, rather than they are not  
21 maintained in the ordinary course of business?

22 MR. KANE: No, they were

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1 maintained in the ordinary course of business.  
2 In fact, Mr. Havens, Skytel previously had  
3 access to these documents recently when they  
4 were in Indiana for document productions and  
5 investigation in connection with the  
6 bankruptcy case, and his counsel sat in the  
7 same room.

8           These documents were all in  
9 Indiana in some lateral files. They were  
10 organized in those files by names. I mean,  
11 they know their facilities by names like World  
12 Trade Center or Philadelphia or something like  
13 that, and I just asked them to go through and  
14 add -- as they put these in boxes, to add  
15 dividers that identified the call sign for  
16 each document.

17           You know, we here talk in terms of  
18 call signs as we are going through, but beyond  
19 that, I examined them enough to determine that  
20 there is nothing there that we are going to  
21 seek confidentiality on, because they are all  
22 just sort of routine business operations.

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1                   Now in addition, I have some  
2 documents in my possession that are more of a  
3 financial nature, and I will have to determine  
4 whether any of those are subject to  
5 confidentiality. But if they are, I will take  
6 care of making the copies of those, because it  
7 is a limited number.

8                   JUDGE SIPPEL: When can you have  
9 that done from your office, from the set in  
10 your office? How long is that --

11                  MR. KELLER: As I said, I was  
12 prepared to do all of this within 10 days of  
13 today, because that would be part of the  
14 production. Anything that I am going to  
15 physically copy and produce will be at least  
16 within 10 days of today.

17                  JUDGE SIPPEL: Would you prepare a  
18 proposed order and send it to me today or  
19 tomorrow morning?

20                  MS. KANE: Yes, Your Honor.

21                  JUDGE SIPPEL: To the extent that  
22 you can, coordinate it with Mr. Keller. That

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1 would facilitate things for me immensely, and  
2 I don't want something -- an order that is  
3 going to be objected to, because it is  
4 something or something or something. And of  
5 course, everything is subject to  
6 confidentiality, but if documents meet that  
7 criteria. Okay.

8 That is a tall order, but I am  
9 going to leave the rest of it up to the  
10 attorneys to figure out what you want to do  
11 and how you want to do it.

12 MR. HAVENS: Could I ask, on the  
13 issue of cost, does that mean that, if my  
14 companies do not meet the cost in this case  
15 that we will not get copies?

16 JUDGE SIPPEL: Well, we haven't  
17 gotten to that yet. Okay? We don't even know  
18 whether certain documents exist or not. I am  
19 not sure. No, I am not saying -- Now, look,  
20 we are not going to make an issue of that, Mr.  
21 Havens, and certainly not today.

22 MR. HAVENS: Okay.

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1 JUDGE SIPPEL: I got the  
2 impression that you would be willing to maybe  
3 spring for the cost. I pursued that with you  
4 to see how far you were willing to take it.  
5 Let's leave well enough alone right now,  
6 unless -- Well, I am not going to say anything  
7 more, because I am just going to confuse  
8 myself and everybody else.

9 MS. KANE: Your Honor, I just want  
10 to clarify what it is you would like a  
11 prepared order on.

12 JUDGE SIPPEL: The order that I  
13 said that I was going to need to issue in  
14 order to move that discovery forward that you  
15 initiated back in -- was it October?

16 MS. KANE: No, it was December,  
17 Your Honor. Not too long ago.

18 JUDGE SIPPEL: December. Oh,  
19 well, that is not too bad.

20 MR. KELLER: So now you are  
21 granting the motion concerning discovery?

22 JUDGE SIPPEL: Absolutely,

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1 exactly, and subject to the law and the  
2 discovery proceed in accordance with  
3 discussions today, and that at least the  
4 initial wave of documents be produced in 10  
5 days.

6 MR. PLACHE: Your Honor, it sounds  
7 as if there is only one copy of these  
8 documents and that they are not Bates stamped.  
9 There is no table of contents, and there's no  
10 Bates stamps. With this many documents, it  
11 would be good to have them at least Bates  
12 stamped.

13 JUDGE SIPPEL: I agree. I agree.

14 MR. PLACHE: So then we can all  
15 know we are working from the same set of  
16 documents.

17 JUDGE SIPPEL: I am very squirmy  
18 about that, and that is why I said I want them  
19 under Mr. Keller's control in being examined.  
20 That is what he proposed in the first  
21 instance. At least, that gets it started.

22 MR. PLACHE: As long as they are

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1 under Mr. Keller's control and he is  
2 responsible, but when others start to go  
3 through them, if something gets lost or torn -  
4 -

5 JUDGE SIPPEL: I understand.

6 MR. PLACE: -- displaced or out of  
7 order, you know, when it gets returned, then--

8 MR. HAVENS: Can't MCLM Bates  
9 stamp the documents?

10 MR. KELLER: Again, that is a very  
11 time consuming and expensive undertaking.  
12 What I was saying, the scanning --

13 MR. HAVENS: You mean in the  
14 hearing, whenever you have to expend cost, it  
15 is not possible?

16 JUDGE SIPPEL: Look, Mr. Havens,  
17 we are talking about -- We haven't been  
18 talking a hearing. We are talking about just  
19 discovery, and we are doing the best we can  
20 with what we have.

21 MR. KELLER: What I am saying is  
22 the most efficient method, to Bates stamping

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